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No. 92-1180

In the Supreme Court of the United States

OCTOBER TERM, 1992

UNITED STATES OF AMERICA, PETITIONER

v.

JAMES DANIEL GOOD REAL PROPERTY, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTIONS PRESENTED

1. Whether the seizure of the respondent real property for forfeiture, pursuant to a warrant issued by a magistrate judge based on a finding of probable cause, violated the Due Process Clause of the Fifth Amendment because the owner (who did not reside on the premises) was not given notice and an opportunity for a hearing prior to the seizure.

2. Whether a civil action under 21 U.S.C. 881(a)(7) for forfeiture of property used in the commission of a drug offense can be statutorily time-barred even if it is filed within the five-year statute of limitations in 19 U.S.C. 1621.

PARTIES TO THE PROCEEDING

The petitioner in this civil forfeiture action is the United States of America. The respondent is the parcel of real property that is the subject of the forfeiture action. James Daniel Good, the owner of the property, filed a claim and participated in the proceedings below.

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JAMES DANIEL GOOD REAL PROPERTY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the court of appeals, as amended on denial of rehearing (Pet. App. 1a-17a), is reported at 971 F.2d 1376. The opinions of the district court (Pet. App. 18a-22a, 23a-33a) are not reported.

JURISDICTION

The judgment of the court of appeals was entered on April 24, 1992. A petition for rehearing was denied on September 10, 1992. Pet. App. 2a. On November 25, 1992, Justice O'Connor extended the time within which to file a petition for a writ of certiorari to and including January 8, 1993. The petition was filed on that date and was granted on

March 22, 1993. J.A. 33. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution; the Due Process Clause of the Fifth Amendment; 21 U.S.C. 881; and 19 U.S.C. 1600-1610 and 1621 are reproduced at Pet. App. 34a-49a.

STATEMENT

1. On January 31, 1985, Hawaii law enforcement officers executed a warrant authorizing the search of the respondent real property, owned by James Daniel Good. The search uncovered 89 pounds of marijuana, marijuana seeds, vials containing hashish oil, drug paraphernalia, and more than $7000 in United States currency. On July 3, 1985, Good pleaded guilty to one count of promoting a harmful drug in the second degree, in violation of Haw. Rev. Stat. § 712-1245(1)(b) (1988). He was sentenced to one year's imprisonment, a period of community service, and a $1000 fine, and he forfeited $3187 in cash found on the premises. Pet. App. 3a, 23a; C.A. Clerk's Rec. 45, Exh. B.

2. a. On August 8, 1989, the United States filed this in rem action seeking forfeiture of the respondent real property under 21 U.S.C. 881(a)(7) on the ground that it had been used to commit or facilitate commission of a federal drug offense. J.A. 11-13. On the same day, in accordance with Rule C(3) of the Supplemental Rules for Certain Admiralty and Maritime Claims, the district court clerk issued a warrant of arrest, which directed the United States Marshal to arrest and attach the property and to

detain it in his custody until further order of the court. J.A. 15-16.[1] On August 18, 1989, a United States magistrate judge signed a warrant authorizing seizure of the property, finding probable cause to believe that it was subject to forfeiture under 21 U.S.C. 881(a)(7). J.A. 27-28.[2] That finding was based on the affidavit of Special Agent Robert Aiu of the Drug Enforcement Administration, which in turn relied on the evidence seized during the January 1985 search of the premises by state police and Good's ensuing conviction in state court. J.A. 29-31; see Pet. App. 3a. The warrant commanded the

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[1] The Supplemental Rules are made applicable to forfeiture proceedings by Rule A of those Rules and by 28 U.S.C. 2461(b) and 21 U.S.C. 881(b). Rule C(3) provides that "[i]n actions by the United States for forfeitures for federal statutory violations, the clerk, upon filing of the complaint, shall forthwith issue a summons and warrant for the arrest of the vessel or other property without requiring a certification of exigent circumstances."

[2] Under the first paragraph of 21 U.S.C. 881(b), property subject to civil forfeiture under the federal drug laws "may be seized by the Attorney General upon process issued pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims by any district court having jurisdiction over the property." Section 881(b) also preserves the Attorney General's authority to seize property for forfeiture without such process—*i.e.*, prior to initiation of forfeiture proceedings—where, *inter alia*, the Attorney General has probable cause to believe that the property is subject to forfeiture under the drug laws, 21 U.S.C. 881(b)(4). Section 881(b) does not require the Attorney General to obtain a warrant for the seizure of property subject to forfeiture, but the last paragraph of Section 881(b) permits the government to request such a warrant in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure. See pages 15-16, *infra*.

U.S. Marshal, DEA Agent Aiu, and other authorized law enforcement officers to seize the property and to enter it for purposes of inspecting it and ensuring its condition. J.A. 28. The property was seized and posted on August 21, 1989. Pet. App. 24a; J.A. 1.[3]

Good was living in Nicaragua at the time of the seizure, and the house was occupied by tenants. The tenants were permitted to remain on the premises upon their agreement to pay their rent to the U.S. Marshal. Pet. App. 4a, 24a. On October 18, 1989, Good filed a verified claim to the property and an answer to the complaint. J.A. 22-23.

b. In an order dated September 11, 1990, the district court denied Good's motion for summary judgment, Pet. App. 23a-33a, rejecting his contention that the action was not timely filed. *Id.* at 28a-30a. The court pointed out that by virtue of 21 U.S.C. 881(d), forfeiture proceedings based on violations of the federal drug laws are governed by the procedures under the customs laws. The statute of limitations under the latter laws, 19 U.S.C. 1621, provides that "[n]o suit or action to recover any pecuniary penalty or forfeiture of property accruing under the customs laws shall be instituted unless such suit or action is commenced within five years after the time when the alleged offense was discovered." The instant for-

[3] The seizure warrant was not formally made a part of the record in this case. The warrant bears the same caption as this case in the district court, but has its own docket number, Mag. No. 89-0267 MT. Counsel for respondent Good has agreed to inclusion of the warrant in the Joint Appendix in this Court. J.A. 27-28. A prior seizure warrant was issued on August 8, 1989, but we have been informed by the U.S. Attorney's Office that a new warrant was required because the original warrant was not executed within 10 days.

feiture action was timely, the court concluded, because it was filed less than five years after the search of the premises on January 31, 1985, which uncovered the evidence on which the forfeiture was based. Pet. App. 30a. The court also held that the seizure of the property without prior notice to Good and an opportunity to be heard did not violate the Due Process Clause. *Id.* at 33a.

On September 26, 1990, the district court granted the United States' motion for summary judgment. Pet. App. 18a-22a. The court concluded that, "based on the recovery of substantial amounts of drugs and drug instrumentalities," the United States had established probable cause that the property was used to facilitate a violation of 21 U.S.C. 841, and was therefore subject to forfeiture. Pet. App. 21a. Under 19 U.S.C. 1615, the burden then shifted to Good to show by a preponderance of the evidence that the property was not subject to forfeiture, by demonstrating either (1) that it was not used for an unlawful purpose, or (2) that Good was an innocent owner within the meaning of 21 U.S.C. 881(a)(7). The court found that Good had failed to carry that burden, explaining that it was "satisfied that the [respondent] property was used for illegal purpose[s] based on the drugs and drug instrumentalities located within the property," and that Good had offered no evidence of innocent ownership. Pet. App. 21a-22a. The court accordingly declared the property forfeited to the United States. *Id.* at 22a.

3. The court of appeals affirmed in part, reversed in part, and remanded for further proceedings. Pet. App. 1a-17a.

a. Over Judge Noonan's dissent, the court of appeals first held that the district court had erred in

finding the action timely. Pet. App. 4a-12a. The court of appeals accepted Good's argument that the five-year statute of limitations in 19 U.S.C. 1621 is only an "outer limit" for filing a forfeiture action, and that further limits are imposed by 19 U.S.C. 1602-1604. Pet. App. 5a. Those provisions, the court explained, impose a "series of internal notification and reporting requirements," under which "customs agents must report to customs officers, *see* 19 U.S.C. § 1602, customs officers must report to the United States attorney, *see* 19 U.S.C. § 1603, and the Attorney General must 'immediately' and 'forthwith' bring a forfeiture action if he believes that one is warranted, *see* 19 U.S.C. § 1604." Pet. App. 5a. The court held those reporting duties applicable to DEA and FBI agents, because those agents are designated to seize property subject to forfeiture under the Controlled Substances Act, 21 U.S.C. 801 *et seq.* Pet. App. 11a (quoting 21 C.F.R. 1316.72).

The court of appeals rejected the government's contention that the duties in 19 U.S.C. 1602-1604 apply only when the property has already been seized, and that they were inapplicable in this case because the respondent property was not seized until after the forfeiture action was commenced. The court pointed out that 19 U.S.C. 1602 and 1603 refer to discovery of violations of the law as well as to seizures of property, and it concluded that the duty of agents to report promptly to the Attorney General is triggered in both situations. Pet. App. 7a-11a. The court accordingly remanded for the district court to determine when Special Agent Aiu or any other DEA agent obtained actual knowledge of the alleged offense, which would, in the court's view, have triggered a duty to make a prompt report. *Id.* at 12a.

Judge Noonan dissented on the timeliness issue, expressing the view that the majority "has converted a set of housekeeping rules for the government into statutory protection for the property of malefactors." Pet. App. 17a. He reasoned that once property has been used in the commission of a narcotics offense, it is subject to forfeiture, and that "[t]he only relevant restriction is the statute of limitations, which bars suit five years after the time of discovery." *Ibid.* In Judge Noonan's view, the majority's opinion not only "in effect, creates a new statute of limitations," but "also provides a new construction of a statute that has been in existence for almost seventy years and has been applied in a variety of contexts to customs offenses without any court ever giving the statute the application given in this case." *Ibid.*

b. The court of appeals further held that the seizure of the premises without giving Good prior notice and an opportunity for a hearing violated his due process rights. Pet. App. 12a-16a. The court noted that, under *Fuentes* v. *Shevin*, 407 U.S. 67 (1972), due process ordinarily requires notice and an opportunity to be heard prior to a deprivation of property and that exceptions to that rule are warranted only in "extraordinary situations," often characterized by "a special need for very prompt action." Pet. App. 14a (quoting 407 U.S. at 90-91). The court found no such circumstances here. Pet. App. 14a-16a.

The court of appeals recognized that extraordinary circumstances were found in *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 U.S. 663 (1974), which held that notice and an opportunity to be heard were not required prior to the seizure of a yacht for forfeiture. But the court distinguished *Calero-Toledo* on

the ground that the seizure there was of personal property. Pet. App. 14a. In its view, "real property is distinct from personal property" for due process purposes, because the fact that real property cannot be moved eliminates the need for "very prompt action." *Ibid.* In addition, although Good did not reside on the respondent property, but was instead renting it to tenants, the court nonetheless found a preseizure hearing necessary because "[p]eople have a particularly strong interest in their homes, and the government has a less significant interest in seeking forfeiture prior to giving notice and an opportunity to be heard." *Id.* at 14a-15a.[4]

SUMMARY OF ARGUMENT

The court of appeals fundamentally erred in its disposition of two distinct issues of broad importance in the administration of the federal forfeiture laws.

I.A. The Due Process Clause does not require notice and an opportunity for a hearing before property is seized for forfeiture. That was especially true in this case because, in accordance with Justice Department policy, the seizure was made pursuant to a warrant issued by a magistrate on the basis of prob-

[4] Although the court of appeals found a due process violation, it concluded that the violation need not invalidate the forfeiture. That is so, the court reasoned, because "[t]he 'mere fact of the illegal seizure, standing alone, does not immunize the [seized] goods from forfeiture.'" Pet. App. 16a (quoting *United States* v. *One (1) 1971 Harley-Davidson Motorcycle*, 508 F.2d 351, 351 (9th Cir. 1974)). The court nevertheless held that, in view of the due process violation it found, Good was entitled to the rents the United States collected from the tenants following the seizure. Pet. App. 16a.

able cause, and Good's tenants were permitted to remain on the premises. Seizures pursuant to a warrant are expressly authorized by 21 U.S.C. 881(b), and the court of appeals has effectively held that statutory provision unconstitutional.

B. Because the seizure was undertaken pursuant to a warrant issued on the basis of probable cause, it was "reasonable" under the Fourth Amendment. Moreover, this Court held in *United States* v. *Monsanto*, 491 U.S. 600, 615-616 (1989), that a house may be restrained prior to trial on the basis of probable cause, especially where the occupant is not removed.

Warrants have traditionally been issued on the basis of an ex parte showing. The text of the Fourth Amendment endorses that practice, for it requires only that probable cause be "supported by Oath or affirmation." In *Gerstein* v. *Pugh*, 420 U.S. 103, 119-122 (1975), the Court held that an adversary hearing is not required on the question of probable cause to detain a criminal defendant pending trial. *A fortiori*, a similar rule should apply to a seizure of property, especially since the government makes out a prima facie case of forfeiture on the merits by establishing probable cause for institution of the suit, and it may do so on the basis of an affidavit such as that submitted by the DEA agent in this case. Although this Court has enforced the Fourth Amendment with particular firmness in the context of a search of a house, it has done so by insisting on compliance with the Warrant Clause of that Amendment, not an adversary hearing.

C. The Due Process Clause imposes no additional procedural requirements in this setting. It is through the Fourth Amendment that the Framers of the Bill

of Rights struck the balance between the people's security in their persons, houses, papers and effects and the public interest in searches and seizures for law enforcement purposes. Accordingly, compliance with the standards and procedures prescribed by the Fourth Amendment constitutes all the "process" that is "due" under the Fifth Amendment.

This Court has already held that "seizure for purposes of forfeiture is one of those 'extraordinary situations' that justify postponing notice and opportunity for a hearing." *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 U.S. 663, 677 (1974). The court below erred in attempting to distinguish *Calero-Toledo* on the ground that there the property was moveable, while here it is not. The Court noted in *Calero-Toledo* that preseizure notice might frustrate the interests served by the forfeiture statutes "since the property seized—as here, a yacht—will often be of a sort that could be removed to another jurisdiction, destroyed, or concealed." 416 U.S. at 679. But the Court did not suggest that the government must show that removal, destruction, or concealment of the property was likely in the particular case before seizure would be justified without prior notice and a hearing. In addition, although a residence cannot readily be removed to another jurisdiction, it can, like the yacht in *Calero-Toledo*, be "destroyed" and its contents "concealed."

The court of appeals' due process ruling is without merit even under the three-factor balancing test of *Mathews* v. *Eldridge*, 424 U.S. 319, 335 (1976). First, the private interest at stake is not substantial, because Good did not live on the premises and his tenants were permitted to remain. Second, *Gerstein* v. *Pugh* held that probable cause can reliably be

determined on the basis of an ex parte showing and that adversary proceedings would be of only slight additional value. Third, the government's interests are substantial, because the government claims title to the property and has a strong interest in protecting it and preventing its use for illegal purposes.

II. A. The court of appeals also erred in holding that 19 U.S.C. 1602-1604 confer a right on a claimant to have a forfeiture action dismissed if the court concludes that law enforcement agents did not act with sufficient dispatch in carrying out certain reporting duties. In the forfeiture context, Section 1603(b)'s requirement that an agent report a violation "promptly" to the U.S. Attorney applies only when the property has been seized and administrative proceedings have either been completed or are inapplicable.

B. In any event, Sections 1602-1604 impose only internal reporting requirements, without specifying any consequence for a violation. Accordingly, under principles recently reaffirmed in *United States* v. *Montalvo-Murillo*, 495 U.S. 711 (1990), and *Brock* v. *Pierce County*, 476 U.S. 253 (1986), a DEA agent's failure to report a drug violation "promptly" does not disable the government from filing a forfeiture action that is otherwise timely under the five-year statute of limitations in 19 U.S.C. 1621. The court of appeals' contrary view cannot be reconciled with *United States* v. *$8850*, 461 U.S. 555 (1983), and it would create incentives to conduct investigations with undue haste and lead to windfalls for drug offenders who have suffered no prejudice as a result of a DEA agent's failure to make a prompt internal report.

ARGUMENT

I. THE CONSTITUTION DOES NOT REQUIRE THAT THE SEIZURE OF REAL PROPERTY FOR FORFEITURE BE PRECEDED BY NOTICE AND AN OPPORTUNITY FOR A HEARING

A. Introduction

The court of appeals erred in holding that the seizure of the respondent property violated the Due Process Clause of the Fifth Amendment because claimant Good was not given notice and an opportunity to be heard prior to the seizure. In accordance with Justice Department policy governing seizures of real property, the government first obtained a warrant of seizure from a U.S. magistrate, based on a finding of probable cause to believe that the property was subject to forfeiture.[5] The seizure

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[5] In Directive No. 90-1 (Jan. 11, 1990), the Executive Office for Asset Forfeiture in the Office of the Deputy Attorney General instructed all U.S. Attorneys, U.S. Marshals, the Federal Bureau of Investigation, and the Drug Enforcement Administration that "[i]n all cases, Department of Justice officials shall obtain *ex parte* judicial approval prior to seizure of realty." *Id.* at 1. That policy does not apply where the owner has consented to the forfeiture (*e.g.*, in connection with a plea agreement), or where the federal government "adopts" for federal forfeiture property that previously was seized by state or local law enforcement agencies. *Id.* at 1 n.1. In Directive No. 90-10 (Oct. 9, 1990), the Executive Office for Asset Forfeiture stated (at 1-2) that prior judicial approval is not required for a warrant of arrest—which is issued by the district court clerk, see note 1, *supra*, and which in some circumstances may be served simply by posting it on the premises without further seizure, see *United States* v. *TWP 17 R 4, Certain Real Property in Maine*, 970 F.2d 984, 986 & n.4 (1st Cir. 1992) (warrant of arrest posted

therefore fully complied with the Fourth Amendment. The Due Process Clause required nothing more, because it is through the Fourth Amendment, not the Fifth, that the Constitution balances private interests against the public interest in conducting searches and seizures for forfeiture and other law enforcement purposes.

The due process claim is especially unmeritorious in this case because Good did not even occupy the premises at the time of the seizure, and he therefore was not personally deprived of possession. In addition—and again in accordance with Justice Department policy—Good's tenants were permitted to continue to occupy the premises during the pendency of the forfeiture proceeding. Compare *United States* v. *A Parcel of Land, Buildings, Appurtenances and Improvements, Known as 92 Buena Vista Ave.*, 113 S. Ct. 1126, 1130 n.3 (1993) (plurality opinon) (owner of seized property permitted to remain in possession under an occupancy agreement).[6] As a

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on vacant land); Supp. Admir. R. E(4)(b)—because arrest alone, without further seizure, does not significantly interfere with the owner's possessory interest.

[6] Directive No. 90-10, discussed in note 5, *supra*, provides (at 2) that, "[a]s a general rule, occupants of real property seized for forfeiture should be permitted to remain in the property pursuant to an occupancy agreement pending forfeiture," if certain conditions are met: (a) the occupants agree to maintain the property in good repair or in the same condition as existed at the time of seizure, and to make any monthly payments to lienholders or monthly rent payments to the U.S. Marshal or his designee if the occupants are tenants; (b) the occupants agree not to engage in continued illegal activity; (c) the continued occupancy does not pose a danger to public health or safety or to law enforcement; (d) the continued occupancy does not adversely affect the

result, the seizure's only immediate consequence for Good was that his tenants were required to pay their monthly rent to the U.S. Marshal, to be held in escrow pending the outcome of the forfeiture proceedings. That temporary loss of the use of money *pendente lite* does not render the procedures used in this case constitutionally inadequate. This Court has repeatedly held that a claimant has no due process right to preseizure notice and an opportunity for a hearing, even when the forfeiture proceedings resulted in the temporary loss of the use of the property (including money). See *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 U.S. 663, 679 (1974); *United States* v. *$8850*, 461 U.S. 555, 562 n.12 (1983); *United States* v. *Von Neumann*, 474 U.S. 242, 249 n.7 (1986).[7]

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ability of the U.S. Marshal to manage the property; and (e) the occupants agree to allow the U.S. Marshal or his designee to make reasonable periodic inspections of the property with adequate and reasonable notice to the occupants. See also U.S. Marshals Service, Dep't of Justice, *Seized Asset Management: Guidelines and Procedures*, Ch. IV, at 7-8, 13-14, 16-17 (Oct. 1990). "Eviction of occupants of residential property will be accomplished only upon order of the U.S. district court having jurisdiction over the forfeiture action." *Id.* at 17.

[7] The decision below conflicts with *United States* v. *A Single Family Residence & Real Property Located at 900 Rio Vista Blvd.*, 803 F.2d 625, 631-632 (11th Cir. 1986), which held that due process permits the seizure of a residence even without a warrant. See also *United States* v. *Certain Real Estate Property Located at 4880 S.E. Dixie Highway*, 838 F.2d 1558, 1561-1562 (11th Cir. 1988). Other courts have held that notice and opportunity for a hearing are required prior to seizure of a residence. See *United States* v. *Premises & Real Property at 4492 S. Livonia Road*, 889 F.2d 1258 (1989), reh'g denied, 897 F.2d 659 (2d Cir. 1990); *United States* v. *A Parcel of Land, Buildings, Appurtenances and Improvements, Known as 92 Buena Vista Ave.*, 937 F.2d 98, 101 (3d Cir. 1991) (dicta), aff'd on other grounds, 113 S. Ct. 1126 (1993); cf. *Richmond Tenants Org., Inc.* v. *Kemp*, 956 F.2d 1300 (4th Cir. 1992) (notice and hearing required prior to eviction of public housing tenants in connection with seizure for forfeiture of their leasehold interests).

Section 881(b) of Title 21 expressly authorizes the government to request issuance of a warrant authorizing seizure of property subject to forfeiture "in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure." The government followed that procedure in this case, seeking and obtaining a warrant based on an ex parte showing of probable cause, as provided in Fed. R. Crim. P. 41.[8] The court of appeals has effectively

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[8] Because the government obtained a seizure warrant, there is no need in this case to decide whether the Fourth Amendment required that procedure in order for the seizure to be reasonable. Cf. *Calero-Toledo*, 416 U.S. at 680 n.14. See *United States* v. *A Single Family Residence & Real Property Located at 900 Rio Vista Blvd.*, 803 F.2d at 631-632; *United States* v. *Distillery at Petersburg*, 25 F. Cas. 853 (C.C.E.D. Va. 1876) (No. 14,961) (seizure of distillery without warrant); see also *G.M. Leasing Corp.* v. *United States*, 429 U.S. 338, 351-352, 354 (1977); *Payton* v. *New York*, 445 U.S. 573, 586-587 (1980); *Dobbins's Distillery* v. *United States*, 96 U.S. 395, 396-397 (1878) (seizure of distillery by executive officers; no mention of warrant); *United States* v. *Distillery at Spring Valley*, 25 F. Cas. 854, 855 (C.C.S.D.N.Y. 1873) (No. 14,963) (same); *United States* v. *Distillery, etc., of J.C. McCoy*, 25 F. Cas. 862 (D. Neb. 1869) (No. 14,964) (same); *United States* v. *Distillery in West Front Street*, 25 F. Cas. 866 (D. Del. 1870) (No. 14,965) (same); cf. *Segura* v. *United States*, 468 U.S. 796, 808-810 (1984) (opinion of Burger, C.J.); *Boyd* v. *United States*, 116 U.S. 616, 623 (1886).

Entry into premises to search for and seize forfeited goods presents different considerations under the Warrant Clause from those raised by the seizure of the premises themselves.

held that statutory authorization for seizures pursuant to such a warrant unconstitutional as applied to seizures of real property, or at least to seizures of a dwelling.[9]

B. The Fourth Amendment Permits Seizure Of Property Based On A Magistrate's Finding Of Probable Cause To Believe It Is Subject To Forfeiture

1. The Fourth Amendment protects against "unreasonable" seizures of property. Where, as here, a seizure is undertaken in conformity with a warrant that was issued on the basis of probable cause (and that was supported by oath or affirmation and particularly described the things to be seized), the seizure satisfies the reasonableness requirement of the Fourth Amendment. See *Illinois* v. *Rodriguez*, 497 U.S. 177, 184-185 (1990); *Maryland* v. *Buie*, 494 U.S. 325, 331 (1990); *Skinner* v. *Railway Labor Executives' Ass'n*, 489 U.S. 602, 619 (1989); *Welsh* v. *Wisconsin*, 466 U.S. 740, 748-749 (1984); *United*

See *G.M. Leasing Corp.*, 429 U.S. at 354; cf. *Carroll* v. *United States*, 267 U.S. 132, 149-153 (1925). The seizure warrant in this case authorized the agents to enter in order to inspect and photograph the premises and to ensure the condition of the premises and the absence of safety hazards. Where the in rem warrant does not contain such authorization, it is Justice Department policy to seek a writ of entry from the court for those purposes. See U.S. Marshals Service, Dep't of Justice, *Seized Asset Management: Guidelines and Procedures*, Ch. IV, at 11 (Oct. 1990).

[9] An Act of Congress is presumptively constitutional, and "[t]his deference to congressional judgment must be afforded even though the claim is that a statute Congress has enacted effects a denial of the procedural due process guaranteed by the Fifth Amendment." *Walters* v. *National Ass'n of Radiation Survivors*, 473 U.S. 305, 319-320 (1985) (citing *Mathews* v. *Eldridge*, 424 U.S. 319, 349 (1976), and *Schweiker* v. *McClure*, 456 U.S. 188 (1982)).

States v. *United States District Court*, 407 U.S. 297, 309-310 (1972); *United States* v. *Ventresca*, 380 U.S. 102, 105-107 (1965); *Johnson* v. *United States*, 333 U.S. 10, 13-14 (1948).

The decision in *United States* v. *Monsanto*, 491 U.S. 600 (1989), strongly supports the conclusion that no more than probable cause was necessary for the seizure. *Monsanto* was a criminal case in which the defendant was charged with directing a large-scale heroin distribution enterprise. In the indictment, the government sought forfeiture under 21 U.S.C. 853(a) of certain real property (including a house and apartment) that allegedly constituted the proceeds of the defendant's illegal activities. The government obtained a pretrial restraining order, pursuant to 21 U.S.C. 853(e), which barred the defendant from transferring his property prior to trial, in order to preserve the availability of the property for forfeiture if he was convicted. In addition to rejecting the defendant's contention that the pretrial restraining order violated the Sixth Amendment because it prevented him from using his assets to hire a lawyer, the Court explicitly held "that assets in a defendant's possession may be restrained in the way they were here based on a finding of probable cause to believe that the assets are forfeitable." 491 U.S. at 615. The Court explained that it had "previously permitted the Government to seize property based on a finding of probable cause to believe that the property will ultimately be proved forfeitable" (*ibid.* (citing *$8850* and *Calero-Toledo*)), and it noted that "[h]ere, where respondent was not ousted from his property, but merely restrained from disposing of it, the governmental intrusion was even less severe than those permitted by our prior decisions." 491 U.S. at 615.

"Indeed," the *Monsanto* Court continued, "it would be odd to conclude that the Government may not restrain property, such as the home and apartment in respondent's possession, based on a finding of probable cause, when we have held that (under appropriate circumstances), the Government may restrain *persons* where there is a finding of probable cause to believe that the accused has committed a serious offense." 491 U.S. at 615-616 (citing *United States* v. *Salerno*, 481 U.S. 739 (1987)).[10] The Court concluded that the property could be subject to a similar pretrial restraint to assure its "appearance" at trial and to "protect the community's interest in full recovery of any ill-gotten gains." 491 U.S. at 616.

The parallel to seizure of a person is even closer here than it was in *Monsanto*, because in civil in rem forfeiture proceedings, the property itself is the defendant. *Calero-Toledo*, 416 U.S. at 680-686; see also *J.W. Goldsmith, Jr.-Grant Co.* v. *United States*, 254 U.S. 505, 510-511 (1921); *Dobbins's Distillery*, 96 U.S. at 399-401, 403-404. The defendant property therefore at least should be subject to seizure in the same manner as the defendant individual in a criminal prosecution. And so it was in this case. The property was seized (pursuant to a warrant) on the basis of probable cause, but it was "released" to Good's tenants pending trial of the forfeiture action.[11] The occupancy arrangement with the tenants served the same purpose as bail—namely, to regulate custody of the defendant property pending trial

[10] See also *Gerstein* v. *Pugh*, 420 U.S. 103, 111-119 (1975); *Baker* v. *McCollan*, 443 U.S. 137, 142-143 (1979); *County of Riverside* v. *McLaughlin*, 111 S. Ct. 1661, 1667-1668 (1991).

[11] See also *$8850*, 461 U.S. at 569 (discussing ways in which claimant may obtain hearing after seizure).

and to secure the presence of the defendant at trial. See *Distillery, etc., of J.C. McCoy*, 25 F. Cas. at 862 (seized distillery "released on bond").

For the foregoing reasons, there is no reason in this setting to depart from "the general rule under the Fourth Amendment * * * that any and all contraband, instrumentalities, and evidence of crimes may be seized on probable cause (and even without a warrant in various circumstances)." *Fort Wayne Books, Inc.* v. *Indiana*, 489 U.S. 46, 63 (1989); see note 15, *infra*.

2. The Court in *Monsanto* observed in a footnote that it did not have to consider whether the Due Process Clause required a hearing before the pretrial restraining order was imposed in those proceedings, since the Second Circuit had ordered that such a hearing be held and the district court had already conducted the hearing. 491 U.S. at 615 n.10. It would, however, be a striking departure from both the text of the Fourth Amendment and historical practice to require an adversarial hearing on the question of probable cause to support the issuance of a warrant by a magistrate. Warrants authorizing the search and seizure of property have traditionally been based on an ex parte showing of probable cause. The text of the Fourth Amendment explicitly endorses that practice, for it requires only that probable cause be "supported by Oath or affirmation." See *Franks* v. *Delaware*, 438 U.S. 154, 164-165, 168-169, 171 (1978).

Once again, the procedures permitted by the Fourth Amendment for seizure and detention of a person are instructive. In *Gerstein* v. *Pugh*, the Court held that although the Fourth Amendment requires a judicial determination of probable cause as a pre-

requisite to extended restraint of liberty following arrest, 420 U.S. at 111-116, an adversary hearing is not required, *id.* at 119-122. The Court noted that probable cause to believe that the defendant has committed an offense "can be determined reliably without an adversary hearing" and "traditionally has been decided by a magistrate in a nonadversary proceeding on hearsay and written testimony," *id.* at 120; accord *Baker* v. *McCollan*, 443 U.S. 137, 143 & n.2 (1979). There is no reason for a different rule in the setting of this case, where the question is whether there is probable cause to believe that the "suspect" property was used to facilitate the commission of a drug offense.

This conclusion is strongly supported by the standards that govern the adjudication of a civil forfeiture case on the merits. The government makes out a prima facie case by establishing probable cause for the institution of the action. The burden then shifts to the claimant to prove by a preponderance of the evidence that the property was not used to commit a drug offense or that he is an innocent owner. See 19 U.S.C. 1615.[12] Moreover, it is well settled that the government may establish the probable cause necessary to make out its prima facie case on the basis of an affidavit, such as that submitted by the DEA agent in this case.[13] Thus, the submission to

[12] These principles date from the earliest history of the Nation. See Act of July 31, 1789, § 27, 1 Stat. 43-44; *Wood* v. *United States*, 41 U.S. (16 Pet.) 342, 366 (1842); *Taylor* v. *United States*, 44 U.S. (3 How.) 197, 211 (1845).

[13] See *United States* v. *$250,000 in United States Currency*, 808 F.2d 895, 897-900 (1st Cir. 1987); *United States* v. *228 Acres of Land & Dwelling Located on Whites Hill Rd.*, 916 F.2d 808, 814 (2d Cir. 1990), cert. denied, 111 S. Ct. 972 (1991); *Livonia Road*, 889 F.2d at 1267-1268; *United States* v. *Parcel of Real Property Known As 6109 Grubb Rd.*, 886 F.2d 618, 621-622 (3d Cir. 1989); *United States* v. *One Parcel of Real Estate Located at 7715 Betsy Bruce Lane*, 906 F.2d 110, 111-113 (4th Cir. 1990); *United States* v. *1964 Beechcraft Baron Aircraft*, 691 F.2d 725, 728 (5th Cir. 1982), cert. denied, 461 U.S. 914 (1983); *United States* v. *Premises Known as 526 Liscum Drive*, 866 F.2d 213, 217 n.3 (6th Cir. 1989); *United States* v. *One 1982 Chevrolet Corvette*, 976 F.2d 392, 392-393 (8th Cir. 1992) (per curiam); *United States* v. *One 56-Foot Motor Yacht Named Tahuna*, 702 F.2d 1276, 1283 (9th Cir. 1983); *Nnadi* v. *Richter*, 976 F.2d 682, 686-687 (11th Cir. 1992).

the magistrate in this case not only established sufficient grounds for issuance of the warrant for seizure of the property pending entry of final judgment; it also made out a prima facie case on the merits and entitled the United States to a final judgment of forfeiture unless Good affirmatively rebutted that showing or established the innocent owner defense, which he failed to do. If, as this Court held in *Gerstein* v. *Pugh*, an adversary hearing is not required on the issue of probable cause to restrain the defendant in a criminal prosecution, in which the standard of proof is proof beyond a reasonable doubt, it follows *a fortiori* that an adversary hearing is not required on the issue of probable cause to restrain property pending completion of civil forfeiture proceedings, in which probable cause suffices to shift the burden of proof to the claimant and the ultimate question of forfeiture is governed by a preponderance-of-the-evidence standard.

To be sure, as the Second Circuit pointed out in *United States* v. *Premises & Real Property at 4492 S. Livonia Road*, 889 F.2d 1258 (1989), this Court has enforced the Fourth Amendment with particular

firmness in the context of the search of a house. See 889 F.2d at 1264 (citing *Payton* v. *New York*, 445 U.S. 573, 590 (1980), and *United States* v. *Karo*, 468 U.S. 705, 714 (1984)).[14] But as those very cases show, the Court has done so by insisting upon compliance with the Warrant Clause of that Amendment. See *Payton*, 445 U.S. at 586-603; *Karo*, 468 U.S. at 714-718. Nothing in the Fourth Amendment or this Court's decisions construing it suggests that procedures *beyond* those required by the Warrant Clause are required for the search or seizure of a house. To the contrary, the Amendment's first clause speaks of the people's right to be secure in their "houses" against unreasonable searches and seizures in the same terms as it speaks of their right to be secure in their "persons, * * * papers, and effects," and its second clause furnishes heightened protection for "houses" through its provision for a warrant.

The procedural protections the Framers of the Fourth Amendment deemed necessary to guard against arbitrary or erroneous searches and seizures pursuant to a warrant are furnished by the further requirements that the warrant application be more than "bare bones" and be supported by "[s]ufficient

[14] Indeed, the Second Circuit has declined to apply the pre-seizure adversary hearing requirement of *Livonia Road* to the seizure of rental or commercial property. *United States* v. *141st Street Corp.*, 911 F.2d 870, 874-876 (1990), cert. denied, 111 S. Ct. 1017 (1991). Under *141st Street*, the decision in *Livonia Road* should not apply here, because Good no longer used the property as his personal residence at the time of the seizure. But cf. *United States* v. *All Assets of Statewide Auto Parts, Inc.*, 971 F.2d 896 (2d Cir. 1992) (following *Livonia Road* in connection with seizure of business premises where seizure resulted in closing of business).

information" to furnish a basis for determining probable cause (*United States* v. *Leon*, 468 U.S. 897, 915 (1984)); that such information be submitted under "Oath or affirmation," and therefore be accepted by the affiant as true (*Franks* v. *Delaware*, 438 U.S. at 165); that the submission be approved by the "prior judicial judgment" of a neutral and detached magistrate (*United States* v. *United States District Court*, 407 U.S. at 317 & n.18); that the warrant be supported by probable cause, so that there is a "substantial basis" for any ensuing search or seizure (*Illinois* v. *Gates*, 462 U.S. 213, 236 (1983)); and that any warrant issued on the basis of the submission particularly describe the place to be searched and the things to be seized, so that the search or seizure "will be carefully tailored to its justifications" (*Maryland* v. *Garrison*, 480 U.S. 79, 84 (1987)). The courts have no authority to append a further requirement—a prior adversary hearing regarding the propriety of the warrant—onto the Fourth Amendment.[15]

[15] The rule is otherwise "when materials presumptively protected by the First Amendment are involved"; in that situation, an adversary hearing is required prior to seizure of materials to destroy them or block their distribution. *Fort Wayne Books*, 489 U.S. at 62-64. That special rule, however, derives from the unique protections against prior restraint under the First Amendment. *Id.* at 63-64 (quoting *Maryland* v. *Macon*, 472 U.S. 463, 470 (1985)). This case, by contrast, does not involve a subject matter that is afforded special protection under another constitutional amendment. The protection of houses against unreasonable searches and seizures is instead furnished by the Fourth Amendment itself.

C. The Due Process Clause Does Not Require Notice And An Opportunity For A Hearing Prior To A Seizure Of Property That Satisfies Fourth Amendment Standards

The court of appeals did not suggest that the seizure of the respondent property in this case violated the Fourth Amendment. In fact, it did not even mention that Amendment. Instead, invoking modern decisions of this Court in civil cases outside the context of law enforcement and forfeiture, the court of appeals relied on the Due Process Clause in holding that the seizure in this case was unconstitutional because Good was not given notice and an opportunity for a hearing before the seizure. Pet. App. 13a-16a (discussing *Mathews* v. *Eldridge* and *Fuentes* v. *Shevin*). Contrary to the court of appeals' view, however, the Due Process Clause imposes no procedural requirements beyond those prescribed by the Fourth Amendment in this setting.

1. The fundamental purpose of the warrants to which the Fourth Amendment refers is to vest authority in the executing officers to search the place and seize the property specified in the warrant. Nothing in the general terms of the Due Process Clause suggests that a seizure that the Constitution itself deems "reasonable"—and that is undertaken pursuant to authority constitutionally vested in the seizing officers by the warrant—is nevertheless unconstitutional because of a failure to afford the owner prior notice and an opportunity for a hearing. It is through the Fourth Amendment that the Framers of the Bill of Rights struck a balance between the people's security in their persons, houses, papers, and effects and the public interest in effecting searches and seizures for law enforcement purposes. *Zurcher*

v. *Stanford Daily*, 436 U.S. 547, 559 (1978); see also *Maryland* v. *Buie*, 494 U.S. at 331; *Skinner* v. *Railway Labor Executives' Ass'n*, 489 U.S. at 619; *United States* v. *United States District Court*, 407 U.S. at 314-315. There is "no occasion or justification" for a court to "strike a new balance" by denying a warrant or invalidating a seizure unless further procedural prerequisites, not required by the Fourth Amendment, are met. See *Stanford Daily*, 436 U.S. at 559.

Put another way, because the Fourth Amendment specifically regulates the seizure of property by the government for law enforcement purposes (including forfeiture), compliance with the standards and procedures prescribed by the Fourth Amendment constitutes all the "process" that is "due" to the claimant under the Fifth Amendment. The Court made that very point in *Gerstein* v. *Pugh* with respect to procedures for detaining a criminal defendant pending trial (420 U.S. at 125 n.27):

> The historical basis of the probable cause requirement is quite different from the relatively recent application of variable procedural due process in debtor-creditor disputes and termination of government-created benefits. The Fourth Amendment was tailored explicitly for the criminal justice system, and its balance between individual and public interests always has been thought to define the 'process that is due' for seizures of person or property in criminal cases, including the detention of suspects pending trial.

See also *Baker* v. *McCollan*, 443 U.S. at 143-146 (arrest and detention of suspect on the basis of warrant supported by probable cause, which satisfies the Fourth Amendment, "is entirely consistent with 'due

process of law' "); *G.M. Leasing Corp.*, 429 U.S. at 352 n.18.[16]

Similarly, in *Graham* v. *Connor*, 490 U.S. 386, 394-395 (1989), the Court held that the Fourth Amendment, rather than the Due Process Clause, is the source of any specific limitations on the use of force in seizing a person. The Court reasoned that because the "reasonableness" standard of the Fourth Amendment "provides an explicit textual source of constitutional protection against this sort of physically intrusive governmental conduct, that Amendment, not the more generalized notion of 'substantive due process,' must be the guide for analyzing these claims."

[16] In support of its holding in *G.M. Leasing Corp.* that a warrant was not necessary to seize automobiles in open places to secure payment of taxes, the Court first relied on the holding in *Murray's Lessee* v. *Hoboken Land & Improvement Co.*, 59 U.S. (18 How.) 272, 285-286 (1856), that a warrant was not necessary to seize a debtor's land in satisfaction of a claim of the United States. 429 U.S. at 351-352. The Court then stated (*id.* at 352 n.18 (emphasis added)):

> In *Phillips* v. *Commissioner*, 283 U.S. 589, 596-597 (1931), the Court rejected a constitutional challenge to the statutory system under which taxes may be collected summarily without a pre-seizure judicial hearing. It was held that as long as there was an adequate opportunity for post-seizure determination of the taxpayer's rights, the statute met the requirements of due process. See *Commissioner* v. *Shapiro*, 424 U.S. 614, 630-633 (1976); *Fuentes* v. *Shevin*, 407 U.S. 67, 91-92 (1972). These cases, of course, center upon the Due Process Clause rather than the Fourth Amendment, *but the constitutional analysis is similar and yields a like result.* It is to be noted that the Court in *Phillips*, 283 U.S., at 596, cited *Murray's Lessee* with approval as a case which sustained proceedings "more summary in character" and "involving less directly the obligation of the taxpayer."

Id. at 395. So here, the warrant and reasonableness requirements of the Fourth Amendment furnish an "explicit textual source of constitutional protection" for the "physically intrusive governmental conduct" involved in the seizure of a house, and that Amendment, not the more "generalized notion" of procedural due process, must be the guide for analyzing Good's claim of a right to additional procedural measures.

2. In addition to the foregoing cases that address the relation of the Fourth and Fifth Amendments generally, the Court has already specifically held that "seizure for purposes of forfeiture is one of those '"extraordinary situations" that justify postponing notice and opportunity for a hearing.'" *Calero-Toledo*, 416 U.S. at 677 (quoting *Fuentes* v *Shevin*, 407 U.S. at 90). The Court relied on three considerations: (1) the seizure served significant purposes, because it permitted the government to assert *in rem* jurisdiction, prevent illicit use of the property, and enforce the drug laws; (2) preseizure notice and hearing might frustrate the interests served by the statutes, because the property seized will often be of a sort that could be removed to another jurisdiction, destroyed, or concealed if advance warning were given; and (3) unlike in *Fuentes* v. *Shevin*, the seizure was initiated not by interested private parties, but by government officials. 416 U.S. at 679.[17]

[17] As the Court also noted in *Calero-Toledo*, 416 U.S. at 679 n.14, *Fuentes* itself had distinguished a seizure under a search warrant from a seizure under a writ of replevin, on the grounds (1) that a search warrant is generally issued to serve highly important governmental needs and "is generally issued in situations demanding prompt action," and

The same considerations are applicable in this case. Here, as in *Calero-Toledo*, seizure furnishes a basis for the government "to assert *in rem* jurisdiction over the property to conduct forfeiture proceedings, thereby fostering the public interest in preventing continued illicit use of the property and in enforcing criminal sanctions." 416 U.S. at 679; see also *Republic National Bank* v. *United States*, 113 S. Ct. 554, 557 (1992).[18] Moreover, "unlike the situation in *Fuentes*, seizure is not initiated by self-interested private parties; rather, [government] officials deter-

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(2) that the Fourth Amendment guarantees that the government will not relinquish control over seizures to private parties and that a warrant will not issue except upon probable cause. 407 U.S. at 93-94 n.30.

[18] This Court has stated that prior seizure of the premises by executive officials is necessary for institution of forfeiture proceedings. *Dobbins's Distillery*, 96 U.S. at 396; see also 1 D. Smith, *Prosecution and Defense of Forfeiture Cases* ¶ 9.01[2], at 9-4 to 9-7 (1992). It appears, however, that at least in some circumstances, a court may acquire bare jurisdiction over the defendant real property simply through issuance and service of an in rem warrant of arrest. See *TWP 17 R 4, Certain Real Property in Maine*, 970 F.2d at 986, 989. Where service of such a warrant requires nothing more than posting it on the premises, no conceivable due process issue could arise. See *id.* at 989-990. However, seizure ordinarily would be necessary for the court to acquire and exercise meaningful custody over the premises and to ensure against its continued use for illegal purposes. See generally 1 D. Smith, *Prosecution and Defense of Forfeiture Cases* ¶ 9.01[4], at 9-9 to 9-16 (1992). For these reasons, and because some form of physical seizure has historically preceded or accompanied the institution of forfeiture proceedings, the first factor identified in *Calero-Toledo* is equally applicable to seizures of real property.

mine whether seizure is appropriate under the provisions of the [federal] statutes." 416 U.S. at 679.[19]

The court of appeals sought to distinguish *Calero-Toledo* on the ground that there the property was moveable, while here it is not. Pet. App. 14a-15a. The Court in *Calero-Toledo*, however, simply identified, as one of the three relevant factors, that "preseizure notice and hearing might frustrate the interests served by the [forfeiture] statutes, since the property seized—as here, a yacht—will often be of a sort that could be removed to another jurisdiction, destroyed, or concealed, if advance warning of confiscation were given." 416 U.S. at 679. The Court did not suggest that it was necessary for the government to show that removal, concealment, or destruction of the property was likely in a particular case before seizure would be justified without prior notice and a hearing; it simply observed that property subject to forfeiture "will often be of a sort" that raises those concerns. Compare *Segura*, 468 U.S. at 807 (opinion of Burger, C.J.); *Chambers* v. *Maroney*, 399 U.S. 42, 51-52 (1970). The Court thus stated a categorical rule in *Calero-Toledo*, based on the characteristics of forfeited property generally. Moreover, the Court did not mention only the possibility of removal of the property; it also observed that property could be "destroyed" or "concealed." A residence, just like a yacht, can be "destroyed," and its

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[19] These factors also distinguish *Connecticut* v. *Doehr*, 111 S. Ct. 2105 (1991), on which respondent relies (Br. in Opp. 8). Moreover, unlike in *Doehr*, where the plaintiff had no interest in the real estate when he sought the attachment (see 111 S. Ct. at 2115), the United States here had an interest in the property itself as a result of Good's use of it to commit a drug offense.

contents (which may also be subject to forfeiture if used in, or the proceeds of, a drug transaction) can be "concealed." Other governmental interests also weigh against a special rule for real property, including possible danger to the seizing agents if the owner or occupant is tipped off in advance, and the owner's use of a hearing to obtain discovery (including disclosure of the identity of informants) in a parallel criminal investigation or trial.[20]

The conclusion that *Calero-Toledo* addresses seizures of property for forfeiture purposes on a categorical basis also is supported by the Court's subsequent decisions in *$8850* and *United States* v. *Von Neumann*, 474 U.S. 242 (1986). In *$8850*, the claimant conceded that the government was not constitutionally required to afford her an opportunity for a hearing before it seized the property for forfeiture under the customs laws. 461 U.S. at 562. The Court observed in a footnote that the general rule is that in the absence of an "extraordinary situation," a party may not invoke the power of the State to seize a person's property without a prior judicial determination that the seizure is justified. Significantly, however, the Court stated that it "ha[d] previously held that such an extraordinary situation exists when the government seizes items subject to forfeiture." *Id.* at 562 n.12 (citing *Calero-Toledo*). The Court then added that *Calero-Toledo* "clearly indicates that due process does not require federal customs officials to conduct a hearing before seizing items subject to forfeiture," and that the governmental

[20] It also is significant that in *Calero-Toledo*, both the owner and the lessee were entirely dispossessed of the yacht during the forfeiture proceedings. Here, by contrast, Good's tenants remained in possession of the premises.

interests found decisive in *Calero-Toledo*—including that "preseizure notice might frustrate the statutory purpose"—were equally present in the customs setting. *Ibid.* The Court reiterated the same point in *Von Neumann*, 474 U.S. at 249 n.7. Although the property at issue in both *$8850* and *Von Neumann* was moveable, the Court did not rely on or even mention that fact in its discussion of the preseizure due process issue.

3. The court of appeals' ruling that due process requires preseizure notice and an opportunity for a hearing is without merit even if it is appropriate to apply the "flexible" balancing test of *Mathews* v. *Eldridge* in this setting. The Court identified three relevant factors in *Mathews* v. *Eldridge* (424 U.S. at 335):

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail.

All three of these factors support the constitutionality of the seizure in this case.

a. The private interest in this case does not justify an extraordinary departure from established Fourth Amendment procedures. As we have noted, although the court of appeals relied on the notion that a person's home warrants special constitutional protection, Pet. App. 14a-15a, the respondent property was not Good's home at the time of the seizure. Moreover, in accordance with Justice Department policy (see note

6, *supra*), Good's tenants were permitted to continue to reside on the premises pending the outcome of the forfeiture proceedings. As a result of that policy, even where the residence is occupied by the owner, the only real change wrought by the typical seizure is that the owner's continued occupancy is subject to an agreement that recognizes the United States' interests in protecting its claim to the property and obligates the owner, *inter alia*, to maintain the property and refrain from making illegal use of it. In this case, the only immediate consequence for Good was that rent payments were to be made to the U.S. Marshal to be held in escrow, rather than to Good—a consequence no different from the loss of the use of cash in *$8850*, which this Court held did not require prior notice and an opportunity for a hearing.

b. The court of appeals made no attempt to assess either the "risk of an erroneous deprivation" under the warrant procedure utilized in this case or the "probable value, if any," of an adversary hearing. In *Gerstein* v. *Pugh*, this Court addressed those considerations in the context of seizures of a person pending trial, which are governed by the same legal standard—probable cause—that governs here. The existence of probable cause, the Court concluded, "can be determined reliably without an adversary hearing" and "traditionally has been decided by a magistrate in a nonadversary proceeding on hearsay and written testimony." 420 U.S. at 120. The Court explained:

> The use of an informal procedure is justified not only by the lesser consequences of a probable cause determination but also by the nature of the determination itself. It does not require the fine resolution of conflicting evidence that a reasonable-doubt or even a preponderance standard demands, and credibility determinations are seldom crucial in deciding whether the evidence supports a reasonable belief in guilt. This is not to say that confrontation and cross-examination might not enhance the reliability of probable cause determinations in some cases. In most cases, however, their value would be too slight to justify holding, as a matter of constitutional principle, that these formalities and safeguards designed for trial must also be employed in making the Fourth Amendment determination of probable cause.

Id. at 121-122 (footnote and citation omitted).

If such procedures are constitutionally sufficient where loss of liberty is involved, it should follow *a fortiori* that they are sufficient in this case. In fact, in the very line of due process cases of which *Fuentes* v. *Shevin* and *Mathews* v. *Eldridge* are a part, the Court has indicated in a variety of contexts that a determination of probable cause by a neutral judicial officer, on the basis of an adequate affidavit, will suffice for due process purposes. See *Mitchell* v. *W.T. Grant Co.*, 416 U.S. 600, 612, 615-618 (1974); *North Georgia Finishing, Inc.* v. *Di-Chem, Inc.*, 419 U.S. 601, 606-608 (1975); *Commissioner* v. *Shapiro*, 424 U.S. 614, 629-630 & nn. 11-12, 633-634 (1976);[21] cf. *Connecticut* v. *Doehr*, 111 S. Ct. 2105,

[21] In *Shapiro*, the Court held that the government's interest in collecting the revenue "is clearly sufficient to justify seizure of a taxpayer's assets without a *pre*seizure hearing," 424 U.S. at 630 n.12 (citing *Fuentes* v. *Shevin*; see 407 U.S. at 91-92), but held that a post-seizure, probable cause-type inquiry was appropriate where the taxpayer alleged irreparable injury.

2112, 2114 (1991); *Bell* v. *Burson*, 402 U.S. 535, 540 (1971); see also *FDIC* v. *Mallen*, 486 U.S. 230 (1988) (sustaining statute providing for suspension of bank director upon grand jury's finding of probable cause). Indeed, the Court suggested as much in *Mathews* v. *Eldridge* itself. See 424 U.S. at 334.

The validity of that procedure here is further supported by the "nature of the relevant inquiry," *Mathews* v. *Eldridge*, 424 U.S. at 343, in a forfeiture case. A showing of probable cause on the basis of the affidavit of the DEA agent was sufficient not only to justify the seizure, but also to meet the government's initial burden on the merits of the forfeiture action, and thereby to shift to Good the burden of showing by a preponderance of the evidence that the property was not subject to forfeiture. Surely seizure should be permitted where the government has established the elements of its prima facie case. Cf. *Samuels* v. *McCurdy*, 267 U.S. 188, 200 (1925).[22]

c. The governmental interests involved also strongly support the adequacy of the procedures utilized in this case. By operation of 21 U.S.C. 881, the government itself claims title to the property, compare

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[22] It is difficult to fathom what purpose would have been served by a prior adversary hearing in this case in any event. Good had pleaded guilty in state court to the drug offenses that gave rise to the forfeiture, and the warrant application was supoprted by an affidavit describing the evidence seized from the house by state law enforcement officers during the search that led to the state prosecution. See page 3, *supra*. Not surprisingly, when the case was resolved on the merits Good failed to produce contrary evidence to defeat the government's motion for summary judgment based on that submission.

Connecticut v. *Doehr*, 111 S. Ct. at 2115, and it has a strong interest in protecting the property, see *W.T. Grant Co.*, 416 U.S. at 608-609; *Calero-Toledo*, 416 U.S. at 679, and in preventing its use for illegal purposes, *Calero-Toledo*, 416 U.S. at 679. "Historical and contemporary practice support our analysis" as well, *Connecticut* v. *Doehr*, 111 S. Ct. at 2115, because property has traditionally been seized for forfeiture on the basis of, at most, an ex parte determination of probable cause. Only the most persuasive empirical showing that this long-established procedure, sanctioned by the Fourth Amendment, is inadequate would justify judicial imposition of costly and burdensome new procedures, such as an adversary hearing. No showing even remotely approaching that level was made below. The court of appeals' due process ruling therefore should be reversed.

II. THE "PROMPTNESS" PROVISIONS OF THE CUSTOMS STATUTES DO NOT FURNISH A BASIS FOR DISMISSAL OF THIS SUIT

The court of appeals also erred in imposing a "promptness" obligation—judicially enforceable through the sanction of dismissal—on the institution of forfeiture proceedings, even though the forfeiture action was filed within the five-year limitations period in 19 U.S.C. 1621. See Pet. App. 4a-12a. The relevant provisions of the customs laws on which the court of appeals relied in reaching that unprecedented result do not address the timing of referrals to the Attorney General for institution of forfeiture proceedings when the property has not been seized. Moreover, those provisions impose only "internal" notification and reporting requirements on Executive Branch officials, Pet. App. 5a; they do not furnish a statutory basis for dismissal of a forfeiture action.

The court of appeals' ruling to the contrary threatens uncertainty and disruption in the enforcement of federal drug, customs, and other laws.

A. The Customs Laws Require "Prompt" Reporting To The Attorney General For Institution Of Forfeiture Proceedings Only When The Property Has Already Been Seized And Administrative Proceedings Are Unavailable Or Have Been Completed

In remanding to the district court to determine whether this action should be dismissed as untimely, the court of appeals relied on 19 U.S.C. 1602-1604 (as made applicable by 21 U.S.C. 881(d)), and particularly 19 U.S.C. 1603(b). See Pet. App. 4a-12a. Contrary to the ruling of the court of appeals, the requirement in Section 1603(b) to report "promptly" to the United States Attorney arises where both of the following conditions are met: (1) there has been a seizure or a "violation of the customs laws is discovered," *and* (2) "legal proceedings by the United States attorney in connection with such seizure or discovery are required." The court of appeals erroneously believed that a report is necessary if the former condition alone is met. See Pet. App. 9a.

In the forfeiture context, where a violation of customs (or drug) laws has been discovered, judicial proceedings are not "required" unless and until the property has been seized and administrative forfeiture proceedings are either unavailable or have been completed. See 19 U.S.C. 1607-1610.[23] Once the

[23] Under current customs law, property valued at $500,000 or less, as well as monetary instruments and conspicuous drug-carrying conveyances, regardless of value, may be forfeited administratively. See 19 U.S.C. 1607, 1609 (1988 & Supp. III 1991). Where such property is involved, the Customs Service furnishes notice of its intent to forfeit the property. 19 U.S.C. 1607; 19 C.F.R. 162.31. Within 20 days, a claimant must file a cost bond with respect to any interest the claimant wishes to assert in the subject property. The Customs Service then must notify the U.S. Attorney of the claim. 19 U.S.C. 1608; 19 C.F.R. 162.47(a), (b) and (d). If no notice and bond are filed, the property is forfeited administratively. 19 U.S.C. 1609(a). Remission or mitigation of the forfeiture may also obviate any need for judicial proceedings. See *$8850*, 461 U.S. at 557-558, 566. Where the property is not subject to administrative forfeiture, judicial proceedings are necessary and the Customs Service must refer the matter to the U.S. Attorney. 19 U.S.C. 1610; 19 C.F.R. 162.49. Similar regulations govern forfeiture of property seized by the Justice Department under the drug laws and other statutes. See 21 C.F.R. 1316.75-1316.79; 28 C.F.R. 8.7-8.10. Under current Justice Department policy, real property is not forfeited in administrative proceedings.

In the non-forfeiture context, legal proceedings likewise would not ordinarily be "required" under 19 U.S.C. 1603(b) following discovery of a violation of the law until, for example, after administrative proceedings for assessment of a penalty (or for other purposes) have been completed.

latter steps have occurred, legal proceedings in court are required both to "perfect" the title to the property that the government has asserted by seizing the property, *92 Buena Vista Ave.*, 113 S. Ct. at 1134-1137 (opinion of Stevens, J.), and to provide an opportunity for a post-seizure hearing, as required by the Due Process Clause under *$8850*. Prior to that time, however, no provision of the Constitution or laws of the United States independently "requires" that judicial proceedings be instituted.

This reading of 19 U.S.C. 1603 is confirmed by its history. Early in the Nation's history, all forfeiture cases proceeded judicially, with the res coming within the court's jurisdiction by issuance of the warrant of arrest in rem. See, e.g., *Ex parte Hoyt*, 38 U.S.

(13 Pet.) 279 (1839); *Jewels of the Princess of Orange*, 2 Op. Att'y Gen. 496 (1832). Subsequently, however, the Secretary of the Treasury was given authority to forfeit certain property administratively and to remit or mitigate forfeitures.[24] Because of these provisions for administrative disposition, Congress in 1938 amended Section 603 of the Tariff Act of 1930, 19 U.S.C. 1603, to provide for reporting to the U.S. Attorney only when judicial proceedings were required, and by deleting a provision requiring that such reports be made promptly. Act of June 25, 1938, § 27, 52 Stat. 1089; see H.R. Rep. No. 1429, 75th Cong., 1st Sess. 5 (1937); S. Rep. No. 1465, 75th Cong., 3d Sess. 11 (1938).[25] In 1978, Congress reinserted the word "promptly" in the reporting provision. Pub. L. No. 95-410, § 110(b), 92 Stat. 896. But Congress retained the condition that reports need be made only when judicial proceedings are "required" —a matter that cannot be ascertained until the agency has seized the property in question and administrative proceedings for forfeiture or remission

[24] In 1844, Congress first provided for administrative forfeiture of unclaimed goods. Act of Apr. 2, 1844, § 1, 5 Stat. 653. In 1874, Congress provided for petitions for remission or mitigation to be considered by the Secretary of the Treasury after they were first filed and inquired into by the district court. Act of June 22, 1874, §§ 17-19, 18 Stat. 189-190. In 1922, Congress provided for such petitions to be filed directly with the Secretary. Act of Sept. 21, 1922, § 618, 42 Stat. 987-988.

[25] See *Customs Administrative Bill: Hearings on H.R. 6738 Before the House Comm. on Ways and Means*, 75th Cong., 1st Sess. 138 (1937) (Treasury Department section-by-section analysis) ("Since legal proceedings are not necessary in connection with many seizures, it is proposed to require reports to be so made to the United States attorneys only in cases in which legal proceedings are required.").

or mitigation of forfeiture are completed or found to be inapplicable.[26] Because those steps were not completed here, the reporting duty imposed by 19 U.S.C. 1603 was never triggered.

B. 19 U.S.C. 1602-1604 Impose Only "Internal" Reporting Requirements And Do Not Confer A Right On A Claimant To Have A Forfeiture Action Dismissed If Those Requirements Are Not Met

Even if the reporting requirement in 19 U.S.C. 1603 was triggered in this case, the failure by the responsible DEA agents to report Good's violation "promptly" to the U.S. Attorney (should the district court find such a failure on remand) would not give rise to a right on Good's part to have the forfeiture action dismissed.

"[M]any statutory requisitions intended for the guide of officers in the conduct of business devolved upon them . . . do not limit their power or render its exercise in disregard of the requisitions ineffectual." *United States* v. *Montalvo-Murillo*, 495 U.S. 711, 717-718 (1990) (quoting *French* v. *Edwards*, 80 U.S. (13 Wall.) 506, 511 (1872)). For that reason, "[t]here is no presumption or general rule" that for every duty imposed upon the government, there must exist some punitive sanction for departures or omissions. *Montalvo-Murillo*, 495 U.S. at 717. To the contrary, federal statutory provisions imposing procedural duties on federal officials must be construed to conform to the "great principle of public policy * * * which forbids that the public

[26] See H.R. Rep. No. 621, 95th Cong., 1st Sess. 17 (1977) (explaining the purpose of the 1978 addition of "promptly" as being to ensure the availability of judicial review once administrative proceedings have been completed).

interests should be prejudiced by the negligence of the officers or agents to whose care they are confided." *Id.* at 718 (quoting *Brock* v. *Pierce County*, 476 U.S. 253, 260 (1986), and *United States* v. *Nashville, C. & St. L. Ry.*, 118 U.S. 120, 125 (1886)); see also *EEOC* v. *Shell Oil Co.*, 466 U.S. 54, 66 (1984); *id.* at 93 (O'Connor, J., concurring in part and dissenting in part); *United States* v. *Morgan*, 222 U.S. 274, 281-282 (1911). Accordingly, such provisions should not be construed in a manner that would "disarm the Government of a power which has been confided to it to be used for the general good * * * unless plain and express words indicate[] that such was the intention of the Legislature." *Brown* v. *Duchesne*, 60 U.S. (19 How.) 183, 195 (1857).[27]

1. The foregoing principles require rejection of the court of appeals' notion that a district court may order dismissal of a forfeiture action if it concludes that the vague standards of dispatch in 19 U.S.C. 1602-1604 were not satisfied. The customs laws (which are incorporated by reference into 21 U.S.C. 881(d)) furnish protection to private persons from undue delay by the government in instituting forfeiture proceedings in the usual manner in which the law

[27] Application of that rule in this case is reinforced by the principle that suits by the United States are not time-barred unless Congress clearly manifests its intention to that effect, *Guaranty Trust Co.* v. *United States*, 304 U.S. 126, 132 (1938); *United States* v. *Wurts*, 303 U.S. 414, 415-416 (1938); *E.I. duPont de Nemours & Co.* v. *Davis*, 264 U.S. 456, 462 (1924); *United States* v. *St. Paul, M. & M. Ry.*, 247 U.S. 310, 314 (1918); *United States* v. *Nashville, C. & St. L. Ry.*, 118 U.S. at 125, and that statutes of limitations that do apply to the government are to be strictly construed in its favor, *Badaracco* v. *Commissioner*, 464 U.S. 386, 391 (1984); *E.I. duPont de Nemours & Co.* v. *Davis*, 264 U.S. at 462.

affords protection against stale claims—through a statute of limitations. See *United States* v. *Lovasco*, 431 U.S. 783, 788-789 (1977). Thus, 19 U.S.C. 1621 provides that "[n]o suit or action to recover any pecuniary penalty or forfeiture of property accruing under the customs laws shall be instituted unless such suit or action is commenced within five years after the time when the alleged offense was discovered." That statute of limitations unquestionably confers an enforceable right on a person claiming an ownership interest in property against which the United States has brought a forfeiture action, and it may be pleaded by the claimant as an affirmative defense in answering the government's forfeiture complaint. See Fed. R. Civ. P. 8(c); see also 28 U.S.C. 2462.

There is no reason to believe that Congress intended 19 U.S.C. 1602-1604 to confer an additional right on a claimant to have a forfeiture action dismissed, even if the action was brought within the five-year limitations period under 19 U.S.C. 1621. Congress "specified no consequences for the failure" to comply with the promptness requirements in Sections 1602-1604. See *Brock* v. *Pierce County*, 476 U.S. at 259. Especially when juxtaposed against the clear time limit imposed by 19 U.S.C. 1621 for the benefit of property owners and other private persons, the most natural reading of the quite different provisions in 19 U.S.C. 1602-1604 is that they are internal housekeeping measures designed to regulate (and promote expedition in) the conduct of government personnel for the benefit of the government. In fact, the court of appeals in this case acknowledged that those provisions "establish a series of internal notification and reporting requirements." Pet. App. 5a. If Congress had intended 19 U.S.C. 1602-1604 to constitute the equivalent of a Speedy Trial Act, "one

would suppose that Congress would have set some specific deadlines, as it did in the Speedy Trial Act itself. 18 U.S.C. § 3164-74. Here there are simply generalities—'immediately' to inquire, 'forthwith' to commence prosecution, to prosecute 'without delay.'" *United States* v. *Laurenti*, 581 F.2d 37, 43 (2d Cir. 1978), cert. denied, 440 U.S. 958 (1979)).

That interpretation is supported by the background of 19 U.S.C. 1602-1604. Language requiring customs officials to proceed "without delay" appeared in statutes governing civil penalties for customs violations at least as early as 1799. See Act of Mar. 2, 1799, ch. 22, § 89, 1 Stat. 695-696; *Stockwell* v. *United States*, 80 U.S. (13 Wall.) 531, 542-543 (1871). As one commentator has observed:

> The great antiquity of the language indicates that its purpose was not to protect "due process rights" that were as yet undreamt, but rather to insure that federal customs revenues were collected in a timely fashion. This was absolutely essential because such duties "constituted the principal source of federal revenues from 1789 until World War I."
>
> Since the purpose of the promptness language in sections 1602 and 1604 is to protect the fisc rather than claimants' due process rights, these statutes also do not provide claimants with a non-constitutional basis for raising a delay defense.

1 D. Smith, *Prosecution and Defense of Forfeiture Cases* ¶ 12.01[5][b], at 12-27 to 12-28 (1992) (quoting *Laurenti*, 581 F.2d at 41 & n.12). It would be inconsistent with the purpose of promoting the government's financial interests to recognize a personal right in a claimant to require dismissal of the government's action to recover a forfeiture or penalty simply because the government's own agents did not move with sufficient dispatch on its behalf *wthin* the time allowed by the statute of limitations.[28]

Finally, a construction of 19 U.S.C. 1602-1604 that supported dismissal of a forfeiture action would create incentives to investigate possible violations of the law with undue haste, to the disadvantage of both the property owner and the government. See *Laurenti*, 581 F.2d at 43-44; *United States* v. *Lovasco*, 431 U.S. at 793. That result would be especially unjustified where, as here, the property in question was not seized prior to commencement of the forfeiture proceedings, and the owner therefore suffered no prejudice and had no substantial countervailing equities during any period of pre-filing delay.

2. The court of appeals' invocation of Sections 1602 through 1604 also cannot be reconciled with the disposition of the statutory timeliness issue by this Court in *United States* v. *$8850*, *supra*. In *$8850*, the Court announced a flexible four-part test (drawn by analogy from the speedy trial test under *Barker* v. *Wingo*, 407 U.S. 514, 530 (1972)) for assessing the

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[28] Significantly, the language in 19 U.S.C. 1604 directing the Attorney General to cause proceedings to be instituted "forthwith" and "without delay" is followed by language stating that he need not do so if he "decides that such proceedings can not probably be sustained or that the ends of public justice do not require that they should be instituted or prosecuted, in which case he shall report the facts to the Secretary of the Treasury for his direction in the premises." Because this language assumes the continued existence of the Attorney General's discretion in enforcing the laws, it undercuts the notion that Sections 1602 through 1604 circumscribe that discretion to the extent of imposing the severe sanction of dismissal. *Laurenti*, 581 F.2d at 43.

lawfulness under the Due Process Clause of delay between seizure of property and institution of judicial forfeiture proceedings. 461 U.S. at 564. In doing so, however, the Court rejected the approach of *United States* v. *Thirty-seven Photographs*, 402 U.S. 363 (1971). In that case, the Court read time limits into a different statutory provision to ensure a prompt disposition of objections to the seizure of allegedly obscene materials, and thereby to avoid a substantial question concerning the constitutionality of the statutory scheme under the First Amendment. The Court reasoned in *$8850* that even if it "were inclined to interpret the statutes here in such a way as to avoid any due process question, it would be impossible to read into the statutory scheme, as we did in *Thirty-seven Photographs*, a short statute of limitations, since 19 U.S.C. § 1621 (1976 ed., Supp. V) expressly allows the Government to bring a civil forfeiture proceeding within five years." 461 U.S. at 563 n.13. The court of appeals' reading of a shorter (and vaguer) limitations period into 19 U.S.C. 1602-1604 cannot be reconciled with this holding in *$8850*.[29]

[29] Prior to *$8850*, some courts of appeals had followed the approach of *Thirty-seven Photographs* in cases governed by 19 U.S.C. 1602-1604 and dismissed forfeiture actions for failure to satisfy the promptness standards the courts found in those provisions, thereby avoiding the question of what limits the Due Process Clause imposes. See, *e.g.*, *Sarkisian* v. *United States*, 472 F.2d 468, 471 (10th Cir.), cert. denied, 414 U.S. 976 (1973); *States Marine Lines, Inc.* v. *Shultz*, 498 F.2d 1146, 1151-1156 (4th Cir. 1974); *United States* v. *One 1970 Ford Pickup*, 564 F.2d 864, 866 (9th Cir. 1977); see also *United States* v. *One 1971 BMW 4-Door Sedan*, 652 F.2d 817, 818 n.1 (9th Cir. 1981). Those decisions do not survive *$8850*, which makes clear that the Due Process Clause is the sole source of protection (aside from the five-year statute of limitations in 19 U.S.C. 1621) from delay prior to institution of forfeiture proceedings. The Ninth Circuit itself previously had recognized, after *$8850*, that those statutory provisions impose no enforceable standards independent of the Due Process Clause. See *United States* v. *Two Hundred Ninety-Five Ivory Carvings*, 726 F.2d 529, 531 (9th Cir. 1984) ("the prompt referral implicitly required by § 1603 is a referral no later than the time judicial proceedings must be instituted to comply with constitutional due process").

The court of appeals sought to avoid the import of the quoted passage from *$8850* by labeling it mere "dicta" and by expressing the view that this Court "did not examine the effects of competing obligations under sections 1602-04." Pet. App. 7a. The court of appeals was wrong on both counts. This Court elsewhere discussed the statutory framework created by 19 U.S.C. 1602-1604 (see 461 U.S. at 557-558 & n.3), and specifically considered whether the statutes involved in the case, which included 19 U.S.C. 1602-1604, could be construed to avoid a due process problem by imposing a filing deadline shorter than the five years allowed by 19 U.S.C. 1621. The Court held that they could not. If the Court had concluded otherwise, it could have avoided the constitutional issue, just as it had in *Thirty-seven Photographs*. The quoted passage in *$8850* therefore cannot be dismissed either as mere dicta or as being unrelated to 19 U.S.C. 1602-1604.[30]

[30] Contrary to respondent's contention (Br. in Opp. 14-15), this holding in *$8850* is unaffected by the fact that Congress amended 19 U.S.C. 1603 to insert the word "promptly" after the seizure and forfeiture at issue in that case. There already were similar time requirements in 19 U.S.C. 1602 and 1604, and the Court concluded that they did not operate as judicially enforceable limitations periods, because 19 U.S.C. 1621 furnishes an express statute of limitations. Congress's sub-

3. Even if dismissal might be proper in certain situations, this case presents an especially inappropriate occasion for that drastic sanction. Prior cases arising under 19 U.S.C. 1602-1604 have involved forfeiture proceedings instituted after the property was seized. See, *e.g.*, cases cited at note 29, *supra*. In that situation, the owner is dispossessed of the property and may experience hardship or disadvantage as a result. It is a radical departure from prior understandings to construe 19 U.S.C. 1602-1604 to require (subject to the sanction of dismissal) "prompt" referral of possible violations to the Attorney General and institution of judicial proceedings "without delay" where there has been no such seizure. In that setting, 19 U.S.C. 1602-1604, as construed by the court below, would constitute a judicially enforceable directive to complete an investigation hastily, despite the absence of any prejudice to the owner. The Constitution imposes no such limitations,[31] and there is no reason to suppose that Congress intended to do so. In this case, then, a dismissal under 19 U.S.C. 1602-1604 would result in a

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sequent insertion of a parallel promptness requirement in 19 U.S.C. 1603 does not alter the Court's conclusion that 19 U.S.C. 1621 furnishes the only judicially enforceable limitations period under the forfeiture statutes—especially since the Court adverted to that amendment to 19 U.S.C. 1603 without intimating that it would have affected the outcome. See 461 U.S. at 558 n.3.

[31] See *Hoffa* v. *United States*, 385 U.S. 293, 310 (1966) ("[l]aw enforcement officers are under no constitutional duty to call a halt to a criminal investigation the moment they have the minimum evidence to establish probable cause"); *Lovasco*, 431 U.S. at 792 (due process imposes limits only on oppressive pre-indictment delay).

wholly unjustified windfall for a claimant who concededly used his property to facilitate a violation of the federal drug laws.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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